REMARKS

The present application has been reviewed in light of the Office Action mailed on February 2, 2011. Claims 1-30 are currently pending. Claims 1, 8, 19 and 28 have been amended herein. It is respectfully submitted that the claims now pending in the application are fully supported by the Specification, introduce no new matter, and are allowable over the cited references of record. Reconsideration and allowance of the application, as amended herein, is respectfully requested.

Claim Rejections Under 35 U.S.C. §102(b)

Claims 1-30 were rejected under 35 U.S.C. §102(b) as being anticipated by United States Patent Publication No. 2002/0058933 to Christopherson et al. ("Christopherson"). Applicants respectfully submit that Christopherson does not anticipate Applicants' claims for at least the following reasons.

As amended herein, claim 1 recites a temperature monitoring circuit for use with a power source including, *inter alia*, a control circuit for determining a difference between the first and second temperature values "when compared to each other" and for comparing the difference to a first predetermined threshold. Support for this amendment can at least be found on page 9, lines 3-6.

Conversely, Christopherson discloses that a surgical instrument 26 may include one or more thermocouples 74, 80 that communicate with a temperature measurement circuit 76 (interpreted by the Examiner as being analogous to first and second temperature circuits of Applicants' claims) of VETAD 10 over a line 78. (see Para. [0085] of Christopherson). According to Christopherson, thermocouples 74 and 80 are provided for providing temperature measurements at selected tissue locations to indicate the progress of the ablation therapy.

Circuit 76 may be in the form of a single circuit or could comprise two identical circuits such that an apparatus 10 may provide a redundant safety feature. As disclosed in Christopherson, with a double circuit, the thermocouples 74 and 80 would be divided into two groups of thermocouples with one group providing temperature indicating signals to one circuit and the other group providing temperature indicating signals to the other circuit.

Christopherson discloses that a double circuit provides an additional patient safety feature. For example, Christopherson discloses that a surgical instrument 26 may include a straight or helical needle with two thermocouples or temperature sensors thereon. As described in Christopherson, both thermocouples provide signals indicative of temperature to the circuit 76 and output both sets of signals to the microprocessor 20.

Christopherson does not disclose that the set of signals, indicative of temperature, are compared to one another and, subsequently, compared to a first threshold. According to Christopherson, if either set of signals indicated a therapy failure or discontinuance state, such as one of the set of signals reaching and exceeding the primary temperature threshold, the application of RF power would be discontinued. According to Christopherson, in this way one circuit could fail and provide false readings of low temperatures, but patient safety would be maintained by the second circuit providing accurate temperature signals to the microprocessor 20.

In view of the foregoing, it is Applicants' position that Christopherson does not disclose, teach of suggest a temperature monitoring circuit for use with a power source including, *inter alia*, a control circuit for determining a difference between the first and second temperature values "when compared to each other" and for comparing the difference to a first predetermined threshold, as

recited in claim 1. Therefore, in view of the foregoing, Applicants submit that Christopherson does not anticipate Applicants' claims.

Accordingly, in view of the foregoing remarks/arguments, Applicants respectfully submit that the rejection of claim 1 under 35 U.S.C. §102(b) as being anticipated by Christopherson is overcome and should be withdrawn.

Moreover, since claims 2-7 depend from claim 1 and contain all the limitations of claim 1, for at least the reasons presented above regarding the patentability of claim 1, Applicants respectfully submit that claims 2-7 are also patentable under 35 U.S.C. §102(b) over Christopherson.

As amended herein, claim 8 recites an electrosurgical generator including, *inter alia*, a control circuit for determining a difference between the first and second temperature values "when compared to each other" and for comparing the difference to a first predetermined threshold. Thus, for at least the same or similar reasons presented above regarding the patentability of claim 1, Applicants respectfully submit that claim 8 is allowable over Christopherson.

Moreover, since claims 9-18 depend from claim 8, and contain all the limitations of claim 8, for at least the reasons presented above regarding the patentability of claim 8, Applicants respectfully submit that claims 9-18 are also patentable under 35 U.S.C. §102(b) over Christopherson.

As amended herein, claim 19 recites an electrosurgical system including, *inter alia*, a control circuit for determining a difference between the first and second temperature values "when compared to each other" and for comparing the difference to a first predetermined threshold. Thus, for at least the same or similar reasons presented above regarding the patentability of claims 1 and 8, Applicants respectfully submit that claim 19 is allowable over Christopherson.

Moreover, since claims 20-27 depend from claim 19, and contain all the limitations of claim 19, for at least the reasons presented above regarding the patentability of claim 19, Applicants respectfully submit that claims 20-27 are also patentable under 35 U.S.C. §102(b) over Christopherson.

As amended herein, claim 28 recites a method for controlling an electrosurgical system, the method including, *inter alia*, determining a difference of first and second temperature values "when compared to each" other via a control system operably associated with the electrosurgical system. Thus, for at least the same or similar reasons presented above regarding the patentability of claims 1, 8 and 19, Applicants respectfully submit that claim 28 is allowable over Christopherson.

Moreover, since claims 29-30 depend from claim 28, and contain all the limitations of claim 28, for at least the reasons presented above regarding the patentability of claim 28, Applicants respectfully submit that claims 29-30 are also patentable under 35 U.S.C. §102(b) over Christopherson.

Conclusion

In view of the foregoing amendments, arguments and/or remarks, it is respectfully submitted that all claims pending in the application are in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call the Applicants' undersigned Attorney at their convenience.

Please charge any deficiency as well as any other fee(s) that may become due under 37 C.F.R. § 1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s), to Deposit Account No. 50-5016.

An early and favorable response on the merits is earnestly solicited.

Respectfully submitted,

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Date

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